

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LEE H. BAUER, SR.	:	ORDER
	:	DTA NO. 820137
for Redetermination of a Deficiency or for Refund	:	
of Personal Income Tax under Article 22 of the Tax	:	
Law for the Years 1997 and 1998.	:	

Petitioner, Lee H. Bauer, Sr., 824 Old Preemption Road, Lyons, New York 14489-9718, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1997 and 1998.

On February 7, 2005, the Division of Taxation, by its representative, Christopher C. O'Brien, Esq. (Margaret T. Neri, Esq., of counsel), filed a motion for an order pursuant to 20 NYCRR 3000.5 and 3000.9(b) granting summary determination to the Division of Taxation on the ground that there exist no material issues of law or fact and that the Division's motion must be granted as a matter of law. The Division of Taxation submitted the affirmation of Margaret T. Neri, Esq., dated February 7, 2005, with annexed exhibits, in support of its motion. Petitioner did not respond to the motion. Pursuant to 20 NYCRR 3000.5(d) and 3000.9(a)(4), the 90-day period for issuance of this order commenced March 9, 2005. Based upon the motion papers and all the pleadings and proceedings had herein, Timothy J. Alston, Administrative Law Judge, renders the following order.

ISSUE

Whether summary determination should be granted in favor of the Division of Taxation because there are no facts in dispute and, as a matter of law, the facts mandate a determination in favor of the Division.

FINDINGS OF FACT

1. On January 8, 2003, petitioner, Lee H. Bauer, Sr., and his wife, Constance M. Bauer, filed two claims for farmers' school tax credit on form IT-217 in the amounts of \$4,859.26 and \$4,743.36 for the years 1997 and 1998, respectively.¹

2. By cover letter accompanying the claims for credit dated January 2, 2003, petitioner stated:

I am writing to ask for a waiver of the statute of limitations for the 1997 and 1998 IT-217's because this credit was not widely publicized and I was not informed of it.

3. By a Notice of Disallowance dated September 19, 2003, the Division of Taxation ("Division") denied petitioner's claim for credit as untimely, explaining in relevant part:

The Tax Law provides for the granting of a refund or credit if it is applied for within three years from the time the return was required to be filed. In your case the 1997 claim would have had to be filed by 4-15-2001, and the 1998 claim by 4-15-2002. Both claims were received on 01-08-2003.

4. Petitioner and Constance M. Bauer timely filed their joint 1997 New York State resident income tax return on or before April 15, 1998.

¹ Although petitioner and his wife jointly filed the subject claims for credit and also jointly filed their New York returns for the years at issue, the petition in this matter was filed in the name of Lee H. Bauer, Sr., only. Hence, references to "petitioner" herein refer to Lee H. Bauer, Sr.

5. On line 59 of the return submitted with the Division's motion papers, petitioner claimed a farmers' school tax credit of \$4,045.00. Contrary to the return's directions, a form IT-217 is not attached to the return. The 1997 return claimed a net refund of \$3,714.00.

6. The 1997 return submitted with the Division's motion papers is an unsigned copy.

7. Petitioner and Constance M. Bauer timely filed their joint 1998 New York resident income tax return on or before April 15, 1999. Unlike the 1997 return, petitioner's 1998 return did not claim the farmers' school tax credit.

CONCLUSIONS OF LAW

A. A motion for summary determination may be granted:

if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

B. There is no question of fact requiring a hearing with respect to petitioner's claim for credit for the 1998 tax year. Tax Law § 687(a) requires that a claim for credit be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever expires later. Petitioner's 1998 return was filed on or before April 15, 1999 and, pursuant to Tax Law § 687(i), his 1998 income taxes were deemed paid on April 15, 1999. As the 1998 return shows, and as the parties agree, petitioner did not claim a farmers' school tax credit on his 1998 return. Accordingly, petitioner had three years from April 15, 1999 to file a claim for farmers' school tax credit for the 1998 tax year. Petitioner's claim for such credit was filed on December 8, 2003, more than a year and a half beyond the three-year period of limitations. Tax Law § 687(e) expressly precludes the granting of credit for claims filed beyond

the limitations period. The Division thus properly disallowed petitioner's 1998 claim for farmers' school tax credit.

C. With respect to the 1997 claim, contrary to the Division's affirmation and the petition filed herein, it appears that petitioner did claim a farmers' school tax credit on his 1997 return. Specifically, line 59 of the return submitted with the Division's motion papers indicates that petitioner claimed a farmers' school tax credit of \$4,045.00. Accordingly, there are several questions of fact requiring a hearing in order to resolve the ultimate question of whether the Division properly issued a Notice of Disallowance with respect to petitioner's 1997 claim for credit. Among such questions are whether the return submitted with the motion papers is an accurate copy of petitioner's 1997 return; whether petitioner in fact claimed a farmers' school tax credit on his 1997 return as indicated by the copy of the return in evidence; and whether such claim was granted.

D. Pursuant to 20 NYCRR 3000.5(b), an order of any motion which does not finally determine all matters and issues contained in the petition shall not be deemed final and conclusive until the administrative law judge renders a determination on the remaining issues.

E. Accordingly, the Division of Taxation's motion for summary determination is denied. This matter shall be scheduled for a hearing in Rochester on June 7, 2005.

DATED: Troy, New York
March 31, 2005

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE